

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JULY 18 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0151-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
WALTER EARL YOUNG,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20031978

Honorable Barbara Sattler, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Walter E. Young

Kingman
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 After a jury trial in 2004, petitioner Walter Young was convicted of possession of a narcotic drug and possession of drug paraphernalia. The trial court imposed enhanced but substantially mitigated, concurrent, six-year prison terms on each count. We affirmed Young's convictions and sentences on appeal. *State v. Young*, No. 2 CA-CR 2004-0293 (memorandum decision filed Aug. 15, 2005). Young then filed a petition for post-conviction

relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. Finding Young's claim precluded, the trial court denied the requested relief,¹ and this pro se petition for review followed. We will not disturb a trial court's decision to grant or deny post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Young challenges the trial court's reliance on his prior convictions to enhance his sentences, claiming that, in so doing, the trial court violated the constitutional principles set forth in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000). In its ruling denying Young's post-conviction petition, the trial court correctly noted that, because Young had raised this claim on appeal, he is precluded from doing so again. *See* Ariz. R. Crim. P. 32.2(a)(2). On appeal, we rejected Young's argument, based on *Blakely* and *Apprendi*, that he was entitled to have a jury determine beyond a reasonable doubt the fact of his prior convictions. We rejected Young's contention on appeal that the Supreme Court may choose to revisit *Apprendi*'s exemption of the fact of prior convictions from a defendant's right to have a jury determine the existence of any fact that results in a sentence beyond that authorized by the verdict. Following the Supreme Court's precedent, as well as that of our supreme court, *see*

¹After the state pointed out a sentencing error in its response to the petition for post-conviction relief, the trial court amended the sentencing minute entry, reducing the sentence for possession of drug paraphernalia to the concurrent, 2.25-year, substantially mitigated prison term.

State v. Fell, 210 Ariz. 554, ¶¶ 8-9, 115 P.3d 594, 597 (2005); *State v. Ring*, 204 Ariz. 534, ¶ 55, 65 P.3d 915, 937 (2003), we affirmed Young’s sentences.

¶3 Young contends on review that the trial court erroneously found his claim precluded and insists the argument he presented in his petition for post-conviction relief is distinguishable from the *Blakely*-based claim he had raised on appeal. Specifically, he contends that in this proceeding he is challenging, “under the 14th Amendment, the unconstitutionality in the application of [A.R.S. §] 13-604(C) that, absent his admission of the priors, exposed him to the subsequent sentence and liberty deprivation.” We disagree with Young that his most recent *Blakely* argument is “separate and distinct” from the claim he had raised on appeal. He argues in this proceeding, as he did on appeal, that the trial court should not have relied on his prior convictions to expose him to a sentence beyond the statutory maximum. In denying post-conviction relief, the trial court correctly noted that, “[r]egardless of how [Young] chooses to characterize his argument, it is still, at its heart, the same *Blakely* argument he raised on appeal. He is precluded from raising it again.”

¶4 Accordingly, although we grant the petition for review, we deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge